

RONALD COLE

IBLA 80-651

Decided July 16, 1981

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring the unpatented Bugaboo millsite abandoned and void. AA-37069.

Reversed and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Millsites: Generally

A decision by the Bureau of Land Management that unpatented millsite claims are abandoned and void because no notice of intent to hold was filed with the recorded notice of location will be reversed. There is no requirement either in the statute or regulations for such filing.

APPEARANCES: Phillip Paul Weidner, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Ronald Cole appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated April 4, 1980, holding the Bugaboo millsite claim abandoned and void. This claim was located on June 30, 1976, and a notice of location was timely filed with BLM on October 22, 1979. Federal Land Policy and Management Act of 1976 (FLPMA), section 314(b), 43 U.S.C. § 1744(b) (1976).

The BLM decision holds the Bugaboo millsite claim abandoned and void for the failure of appellant to comply with the terms of 43 CFR 3833.2-1(a). That regulation requires:

- (a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file

in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

We begin first by noting that the subject claim is a millsite, and, therefore, the requirements of 43 CFR 3833.2-1(a) are not germane. See Feldslite Corporation of America, 56 IBLA 78 (1981). Although this regulation alludes to a notice of intention to hold, a proper document for filing in the instant case, the regulation on point is 43 CFR 3833.2-1(d). That regulation reads:

(d) The owner of a mill or tunnel site located on Federal lands * * * shall file in the proper BLM office on or before December 30 of each year following the year of recording pursuant to § 3833.1-2 of this title, a notice of intention to hold the mill or tunnel site.

BLM relied upon 43 CFR 3833.4(a) to hold that appellant's failure to file a notice of intention to hold constituted an abandonment of his millsite. 1/

Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), requires the owner of unpatented lode or placer mining claims to file annual proof of assessment work or notice of intent to hold the claims; section 314(b) requires the owner of unpatented lode or placer mining claims, or millsites or tunnel sites to file a copy of the official record of the notice of location; section 314(c) provides that failure to file such instruments as required by (a) and (b) shall be deemed conclusively to constitute abandonment of the mining claim, millsite, or tunnel site. The requirement for notice of intent to hold a millsite is imposed only by regulation, and only for each calendar year following date of recordation with BLM. 43 CFR 3833.2-1(d). Cole was not required to file a notice of intent to hold his millsite claim until December 30, 1980. 2/

1/ Regulation 43 CFR 3833.4(a) states:

"(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

2/ Assuming appellant failed to file a notice of intent to hold on or before Dec. 30, 1980, the millsite could not be deemed abandoned and void absent a failure to comply with a notice of deficiency. Feldslite Corporation of America, 56 IBLA 78 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office is reversed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Bruce R. Harris
Administrative Judge